



PATENT  
Customer No. 22,852  
Attorney Docket No. 6832.0013-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Craig A. ROSEN et al.

Application No.: 09/832,929

Filed: April 12, 2001

For: ALBUMIN FUSION PROTEINS

Group Art Unit: 1653

Examiner: Hope A. Robinson

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Sir:**

## **NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT**

As required by 65 FED. REG. 56387 (September 18, 2000), Patentees notify the Patent and Trademark Office (PTO) of an apparent error in the patent term adjustment.

Patentees received the Issue Notification mailed from the PTO on July 20, 2005. The Issue Notification indicates that the PTO has determined that the patent term adjustment period for this application is 557 days. Based on Patentees' calculation, Patentees believe the correct patent term adjustment period should be 515 days.

Patentees have calculated the patent term adjustment of 515 days based on the following:

Applicants initially received a Notice of Determination of Patent Term Adjustment dated May 26, 2004. The Notice indicated that the PTO determined that the patent term adjustment period for this application is 336 days.

Applicants filed an Application for Patent Term Adjustment - Pre-Grant on August 20, 2004, asking for an additional 21 days of patent term or 357 days total of patent term adjustment. Applicants have not received a decision on their Application for Patent Term Adjustment - Pre-Grant as of the filing of this paper.

Applicants also paid the Issue Fee, Amendment After Allowance under 37 C.F.R. § 1.312, Submission of Substitute Sequence Listing, and Substitute Sequence Listing on August 20, 2004.

Applicants received a Notice of Publication of Application on September 16, 2004, indicating that the above-referenced application published on September 2, 2004. Applicants had not yet paid the publication fee because the Notice of Publication of Application was issued after the Notice of Allowance and Issue Fee Due and therefore, the publication fee was not indicated as due on the Issue Fee Transmittal.

In response to the Notice of Publication of Application, Applicants voluntarily submitted a Notice of Payment of Publication Fee and the publication fee on October 22, 2004. The Notice of Payment of Publication Fee was classified as a miscellaneous incoming letter and Applicants received an 11-day subtraction of patent term adjustment for filing this paper.

Applicants subsequently received a Supplemental Notice of Allowability on November 1, 2004, which included an Examiner's Amendment, after the Office contacted Applicants' representatives on October 20, 2004, requesting authorization for the Examiner's Amendment.

Applicants called the Office of Patent Legal Administration to inquire about the 11-day deduction in patent term adjustment and was informed that the 11-day deduction was for the period from filing of the miscellaneous incoming letter (payment of the

publication fee on October 22, 2004) up to the issuance of the Examiner's Amendment dated November 1, 2004. The Examiner's Amendment was not a response to our paper paying the publication fee and therefore, 11 days should not have been deducted from patent term.

However, Patentees believe that the patent term deduction should have been 74 days: from the date Applicants submitted the Amendment After Allowance Under 37 C.F.R. § 312 on August 20, 2004, until the Examiner's Amendment dated November 1, 2004.

The patent issued on August 9, 2005, after the payment of the issue fee on August 20, 2004. Therefore, Patentees are entitled to 232 days of patent term adjustment to account for the period four months after payment of the issue fee until the patent actually issued on August 9, 2005.

In total, Patentees believe they are entitled to 515 days of patent term adjustment, rather than 557 days determined by the Office, based on 357 days previously requested on August 20, 2004, plus the 232-day delay by the Office for issuance of the patent, from which the 74-day delay by Applicants is subtracted.

Please charge any necessary fees required to enter this paper to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 11, 2005

By: Charles E. Van Horn  
Charles E. Van Horn  
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